

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-112034-02

Date:

AUGUST 22, 2002

Re:

Legend:

Husband	=
Wife	=
Law Firm	=
Son	=
Daughter-in-Law	=
Grandchild 1	=
Grandchild 2	=
Date 1	=
Date 2	=
Trust	=
<u>a</u>	=
Year 1	=
Year 2	=

Dear :

This is in response to your letter dated February 20, 2002, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the generation-skipping transfer (GST) tax exemption.

The facts and representations submitted are as follows:

On Date 1, Wife, in consultation with Law Firm, created Trust for the benefit of Son and his two children, Grandchildren 1 and 2. Law Firm had years of experience in trust, probate, and estate planning matters. Law Firm was not ultimately responsible for drafting the trust agreement governing Trust, but was, at all times, aware of the trust agreement.

PLR-112034-02

Wife appointed Son and Daughter-in-Law as trustees of the Trust. Section A of Article Fourth of the Trust Agreement provides that the Trust will pay all the income of the Trust to Son in at least quarterly installments until termination of the Trust. The trustees have discretion to pay part or all of the principal to Son for Son's maintenance in health and reasonable comfort.

Section C of Article Fourth provides that upon the death of Son, the trustees will distribute principal and accrued income of the Trust to whomever among Wife's descendants Son shall appoint by specific reference in his will. If Son does not appoint by reference, then the principal and accrued income shall be distributed among the descendants of Son, per stripes, or in none survive, to the descendants of Wife, per stirpes.

On Date 1, Wife transferred \$a to the Trust. Law Firm advised Wife to treat the \$a transferred to the Trust as a gift made one-half by Wife and one-half by Husband, and that each spouse should allocate a portion of their respective GST tax exemption to the gift on their Year 1 gift tax return, so that the Trust would be exempt from GST tax.

Law Firm prepared Husband's and Wife's gift tax returns for Year 1. On the gift tax returns, Law Firm indicated that Wife and Husband elected to split the gift, but failed to allocate Wife's and Husband's GST tax exemption to the Trust. In Year 2, Law Firm discovered its failure to allocate Wife's and Husband's GST exemption to Trust on the Year 1 gift tax returns. By letter dated Date 2, Law Firm confirmed that it failed to allocate GST exemption to the Trust and accepted responsibility for the error.

You have requested a ruling for an extension of time under section 2642(g) of the Internal Revenue Code and sections 301.9100-1 and 301.9100-3 to make allocations of Husband's and Wife's GST exemption to the Trust, based on the value of the transferred assets as of Date 1, the date of the transfer to the Trust.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall, for purposes of chapter 12, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under section 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of tax imposed by section 2601 is the "taxable amount" multiplied by the "applicable rate."

PLR-112034-02

Section 2642(a)(1)(A) provides that except for direct skip transfers, the inclusion ratio is the excess (if any) of 1 over the "applicable fraction" determined for the trust from which such transfer is made.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under section 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under section 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2652(a)(1) provides that for purposes of the GST tax, the term "transferor" means, in part, the donor in the case of any property subject to the gift tax.

Section 2652(a)(2) provides that if, under section 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

Section 2642(b)(1) provides valuation rules for allocations of GST exemption to gift transfers.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) or (2), and an election under section 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

PLR-112034-02

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. Notice 2001-50, 2001-34 I.R.B. 189, provides that taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, Husband and Wife are granted an extension of time of 60 days from the date of this letter to make an allocation of Husband's and Wife's unused GST exemption to the Trust. The allocation will be effective as of Date 1, and the gift tax value of the transfer to the Trust will be used in determining the amount of GST tax exemption to be allocated to the Trust.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

PLR-112034-02

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. This allocation should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely yours,

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy of letter for section 6110 purposes
Copy of this letter